



INTERIOR BOARD OF INDIAN APPEALS

Paiute Indian Tribe of Utah v. Western Regional Director, Bureau of Indian Affairs

38 IBIA 128 (10/15/2002)

Denying reconsideration of:
38 IBIA 106



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

PAIUTE INDIAN TRIBE OF UTAH,
Appellant

v.

WESTERN REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Denying Reconsideration
: But Requesting Review of One
: Issue by the Regional Director
:
:
: Docket No. IBIA 02-157-A
:
:
: October 15, 2002

The Paiute Indian Tribe of Utah seeks reconsideration of the Board's September 12, 2002, order dismissing this appeal. 38 IBIA 106. The Tribe brought the appeal under 25 C.F.R. § 2.8, alleging that the Western Regional Director, Bureau of Indian Affairs, had failed to act on its request for trust acquisition of an 80-acre parcel near Kanosh, Utah. Documents submitted by the Tribe indicated that the Regional Director did not act because the Tribe had not satisfied certain conditions identified in the Phoenix Field Solicitor's April 23, 2001, preliminary title opinion. The Board therefore dismissed the appeal to permit the Tribe to complete the necessary actions.

In its petition for reconsideration, the Tribe asserts that the Regional Director will not act because the April 23, 2001, preliminary title opinion incorporates the opinion expressed in a February 10, 1999, Field Solicitor's memorandum concerning BIA's authority to take land in trust for the Tribe's constituent bands. Under the 1999 memorandum, the property at issue here could not be taken in trust for the "Kanosh Band of Paiute Indians," as the Tribe wishes, but instead must be taken in trust for the "Paiute Indian Tribe of Utah, Kanosh Band."

It is apparent that the Tribe is seeking an advisory opinion from the Board as to whether the 1999 Field Solicitor's memorandum is legally correct. The Board has no direct review authority over opinions issued by the Field Solicitor. Further, it has no authority to issue advisory opinions. E.g., Jackson v. Muskogee Area Director, 32 IBIA 45, 47 (1998), and cases cited therein.

If the Regional Director issues a decision based on the 1999 Field Solicitor's memorandum, and if an appeal is taken to the Board from the Regional Director's decision, the Board will have authority to review legal conclusions reached by the Field Solicitor to the extent they

form the basis of the Regional Director's decision. At this point, however, no decision has been issued by the Regional Director, and thus there is nothing for the Board to review.

Under other circumstances, the Board could use its authority under 25 C.F.R. § 2.8 to order the Regional Director to issue a final decision on the Tribe's trust acquisition request. ^{1/} It cannot do so here, however, because the ball is still in the Tribe's court. The April 23, 2001, preliminary title opinion lists a number of problems with the title evidence, some of which require action by the Tribe. The Tribe does not indicate that it has taken action on any of these problems. Thus, the Regional Director cannot be expected to act on the trust acquisition request at this time.

Even so, the Board urges the Regional Director to provide the Tribe with some way of resolving an issue which is clearly of great concern to it, *i.e.*, the manner in which the beneficial owner of the property is to be designated. The Tribe argues that the 1999 Field Solicitor's memorandum was in error when it was written and, in addition, has been superseded by BIA's most recent list of Federally recognized tribes. (Unlike earlier lists, the current list includes the names of the Tribe's constituent bands under the Tribe's listing. 67 Fed. Reg. 46328, 46330 (July 12, 2002).) The Regional Director is requested to review the Tribe's arguments, seek further advice from the Field Solicitor, and issue a decision as to whether or not BIA is now willing to take this property in trust for the Kanosh Band of Paiute Indians. If the decision is adverse to the Tribe, the Tribe may appeal it to the Board.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this petition for reconsideration is denied.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

^{1/} From the materials before the Board, it appears that the Regional Director has already made the determination required by 25 C.F.R. § 151.12 and is now proceeding under 25 C.F.R. § 151.13 to acquire the title evidence necessary for formal acceptance of title under 25 C.F.R. § 151.14.